



Forthcoming Grand Chamber judgment in a case concerning the immediate return of two migrants who tried to enter Spain by climbing the fences of the Melilla enclave

The European Court of Human Rights will be delivering a **Grand Chamber** judgment¹ in the case of **N.D. and N.T. v. Spain** (applications nos. 8675/15 and 8697/15) at a public hearing on 13 February 2020 at 3 p.m. in the Human Rights Building, Strasbourg.

The case concerns the immediate return to Morocco of two nationals of Mali and Côte d'Ivoire who on 13 August 2014 attempted to enter Spanish territory in an unauthorised manner by climbing the fences surrounding the Spanish enclave of Melilla on the North African coast.

Principal facts and complaints

The applicants, N.D. and N.T., are nationals of Mali and Côte d'Ivoire who were born in 1986 and 1985 respectively. The first applicant left Mali on account of the armed conflict there in 2012. After travelling through Mauritania and Algeria he arrived in Morocco in March 2013 and apparently stayed in the migrants' camp on Mount Gurugu, close to the border with Melilla. The second applicant arrived in Morocco at the end of 2012 and also stayed in the migrants' camp.

The autonomous city of Melilla is a Spanish enclave of 12 sq. km on the North African coast which is surrounded by Moroccan territory. The Spanish authorities have built a barrier along the 13 km border which since 2014 has comprised three parallel fences. Four border crossing points are located along the triple fence. Between these points *Guardia Civil* officials patrol the land border and the coast in order to prevent illegal entry. Groups of foreign nationals from, among other places, sub-Saharan Africa make frequent attempts to breach the fences.

In the early morning of 13 August 2014 an initial attempt at entry took place. According to the Government, the Moroccan police prevented around 500 migrants from scaling the outer fence, but around a hundred migrants nevertheless succeeded. Some 75 migrants managed to reach the top of the inner fence but only a few came down the other side and landed on Spanish soil, where they were met by members of the *Guardia Civil*. The others remained sitting on top of the inner fence. The *Guardia Civil* officials helped them to climb down, before escorting them back to Moroccan territory on the other side of the border through the gates between the fences.

N.D. and N.T. reportedly managed to reach the top of the inner fence and remained there for several hours. At around 3 p.m. and 2 p.m. respectively they climbed down from the fence with the help of Spanish law-enforcement officials who provided them with ladders. As soon as they reached the ground they were apprehended by *Guardia Civil* officials who reportedly handcuffed them, took them back to Morocco and handed them over to the Moroccan authorities. The applicants allegedly did not undergo any identification procedure and had no opportunity to explain their personal circumstances to the officials or to be assisted by lawyers or interpreters. They were reportedly transferred to Nador police station, a few kilometres south of Melilla. There they allegedly requested, and were refused, medical assistance before being taken to Fez, some 300 km away, and being left to fend for themselves.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Relying on Article 4 of Protocol No. 4 (prohibition of collective expulsion) to the European Convention on Human Rights, the applicants maintain that they were subjected to a collective expulsion without an individual assessment of their circumstances and in the absence of any procedure or legal assistance. They complain of a systematic policy of removing migrants without prior identification, which they say was devoid of legal basis at the relevant time. Relying on Article 13 (right to an effective remedy) taken in conjunction with Article 4 of Protocol No. 4, they complain of the lack of an effective remedy with suspensive effect by which to challenge their immediate return to Morocco.

Procedure

The applications were lodged with the European Court of Human Rights on 12 February 2015. In its Chamber [judgment](#) of 3 October 2017 the Court held, unanimously, that there had been a violation of Article 4 of Protocol No. 4 and a violation of Article 13 (right to an effective remedy) taken in conjunction with Article 4 of Protocol No. 4.

On 14 December 2017 the Government requested that the case be referred to the Grand Chamber under Article 43 of the Convention, and on 29 January 2018 the panel of the Grand Chamber accepted that request. A [hearing](#) was held on 26 September 2018.

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Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Denis Lambert (tel: + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.